



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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NOVEMBER 28, 2016

Regular meeting of the City Council held on Monday, NOVEMBER 28, 2016 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juairé, Oram, Ossing, Delano, Doucette, Elder, Tunnera, Irish and Landers. Absent: Robey. Meeting adjourned at 9:07 PM.

ORDERED: That the Minutes of the City Council meeting November 14, 2016, **FILE**; adopted.

ORDERED: That the CONTINUED PUBLIC HEARING On the Proposed Amendment to City Code providing the Zoning Board of Appeals 100 days to file a decision on an appeal or a variance, Order No. 16-1006702, all were heard who wish to be heard, hearing recessed at 8:05 PM.

Councilors Present: Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juairé, Oram, Ossing.

Absent: Robey.

ORDERED: That the Communications from Councilors Clancy and Robey, re: Certifications After Review of Evidence, Adjudicatory Public Hearing, Apex Development Application for Special Permit to Operate a Drive-Through Restaurant Window, Order No. 16-1006632B, **FILE**; adopted.

ORDERED: It is moved that the Marlborough City Council conduct an executive session to discuss an ongoing contractual matter involving a property off Boston Post Road East, for the following purposes:

- 1) in conformance with the provisions of MGL c. 30A, section 21(a)(3), to discuss litigation strategy in the above matter, as an open meeting may have a detrimental effect on the litigating position of the City of Marlborough, and the chair hereby declares that an open meeting may have that effect; and
- 2) in conformance with the provisions of MGL c. 30A, section 21(a)(7), to comply with MGL c. 44, section 33B governing transfer requests, and to receive legal advice relative thereto in accordance with the holding of *Suffolk Construction Co., Inc. v. DCAM*, 449 Mass. 444 (2007).

It is further moved and stated that the Marlborough City Council will re-convene in open session after the executive session; adopted.

Yea: 10-Nay: 0-Absent: 1

Yea – Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juairé, Oram, Ossing.

Absent – Robey.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Recycling Dividends Program Grant in the amount of \$10,500.00 awarded to DPW to expend on approved equipment and activities as depicted in the scope of Grant; adopted.

ORDERED: That the Appointment of Robert Levine as a member of the Zoning Board of Appeals for a term to expire three years from the date of City Council confirmation as Mr. Levine will be replacing Ted Scott who is now the DPW Assistant Commissioner of Operations, **APPROVED**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider re: Proposed Zoning Amendment-Assisted Living Facilities in proper legal form, Order No. 16-1006631C, **MOVED TO ITEM 20**; adopted.

ORDERED: That the Communication from Assistant City Solicitor, Cynthia Panagore Griffin re: Application for Special Permit for a drive-thru window at Apex Center in proper legal form, Order No. 16-1006632C, **MOVED TO ITEM 19**; adopted.

ORDERED: That the Communication from Assistant City Solicitor, Cynthia Panagore Griffin re: Acceptance of Deed-in-Lieu-of-Foreclosure, Russell Street, in proper legal form, Order No. 16-1006700, **MOVED TO ITEM 17**; adopted.

ORDERED: That the Communication from MA Public Employee Retirement Administration Commission, (PERAC), re: Appropriation for Fiscal Year 2018, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, October 24, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Zoning Board of Appeals, September 27, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Library Board of Trustees, October 4, 2016, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.

- a. Ann & Karen Leandres, 43 Maplewood Ave., other property damage.
- b. Thelma Balser, 125 Framingham Rd., other property damage.
- c. Boys & Girls Club, 169 Pleasant St., other property damage.
- d. Curtis Square Condominium, 47A Curtis Ave., other property damage.
- e. Silas Evangelista, 27 Brook St., other property damage.

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

**Marlboro City Council Finance Committee
Monday November 21, 2016
In Council Chambers**

Present: Chairman Ossing; Finance Committee Members Councilors Oram, Doucette and Irish; Councilor Robey was absent. Councilor Clancy and Delano were also in attendance. The meeting convened at 7:00 PM.

1. Order #16-1006721 – Transfer \$324,200.00 from the Reserve for Salaries Account to fund the Police Officer contract for Fiscal Years 2016, 2017 and 2018: The Finance Committee reviewed the Mayor’s letter dated November 9, 2016 requesting the transfer of \$324,200.00 from the Reserve for Salaries account to fund the Police Officers contract. **The Finance Committee voted 4– 0 to approve the Police Officer contract transfers.**

The Finance Committee agreed to support suspending the rules at the November 28, 2016 City Council meeting to approve the transfers.

2. **Order #16-1006723 – Transfer \$24,626.56 from the Reserve for Salaries Account to fund the Retirement in the DPW:** The Finance Committee reviewed the Mayor’s letter dated November 9, 2016 requesting the transfer of \$24,626.56 from the Reserve for Salaries account to the Sick Leave Buy Back account to fund the retirement of a DPW employee. **The Finance Committee voted 4– 0 to approve the transfer.**
3. **Order #16-1006720 – Transfer \$337,500.00 from the Undesignated Account to the Future Growth Stabilization Account:** The Finance Committee reviewed the Mayor’s letter dated November 9, 2016 requesting the transfer of \$337,500.00 from the Undesignated Fund account to the Future Growth Stabilization account. **The Finance Committee voted 4– 0 to approve the transfer along with a sunset clause that that states the Future Growth Stabilization Account funds will be transferred to the Undesignated Stabilization account if not utilized by June 30, 2018.**
4. **Order #16-1006722 – Transfer \$150,000.00 from the Undesignated Account to the Downtown Stabilization Account:** The Finance Committee reviewed the Mayor’s letter dated November 9, 2016 requesting the transfer of \$150,000.00 from the Undesignated Fund account to the Downtown Stabilization account. **The Finance Committee voted 4– 0 to approve the transfer.**

The Finance Committee adjourned at 8:04 PM.

Reports of Committees Cont'd:

Councilor Juaire reported the following out of the Urban Affairs Committee:

Meeting Name: City Council Urban Affairs Committee

Date: November 15, 2016

Time: 6:00 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 6:06 PM – Adjourned: 7:41 PM

Present: Chairman Juaire (Acting); Urban Affairs Committee Members Councilors Tunnera and Landers; and Councilors Clancy and Doucette

Absent: Councilors Delano and Elder

Also Present: Brian Falk (Attorney, **Mirick O'Connell**); **Douglas Scott (Interim Building Commissioner, City of Marlborough)**; **Chief Kevin Breen (Fire Chief, City of Marlborough)**; **Donald Rider (City Solicitor, City of Marlborough)**; **Rick Roper (Crabtree Lake Williams LLC)**

Order No. 16-1006683: Application to further modify Special Permit from Crabtree Lake Williams LLC for Overlook at Lake Williams, Lakeside Avenue, to accommodate changes to the design and configuration of the emergency access road and perimeter fencing in the vicinity of Bond Street, likely affecting Conditions #20, #22, #23, #36, #38 and #39, X16-1006636B, X08/09/-1002051E. The Urban Affairs Committee met with Attorney Brian Falk, representative of Crabtree Lake Williams LLC, for a discussion of a special permit modification regarding the emergency access road and perimeter fencing affecting Special Permit Conditions 20, 36, 38 and 39. They agreed upon the following changes to those conditions, (20) snow must be removed from the emergency access road to allow passage of emergency vehicles and such snow removal must not disturb the abutting Bond Street Neighbors; (36) the emergency access road shall be constructed using grass covered porous pavement materials between Bond Street and the interior of the Site; (38) the height of the gate shall be changed from eight feet to six feet; and (39) the emergency access road shall be maintained as a lawn accessible by emergency vehicles by way of the porous pavement materials. **Motion made by Councilor Tunnera, seconded by Chair, to approve as amended. The motion carried 3-0 (Councilors Delano and Elder absent.)**

Motion made by Councilor Tunnera, seconded by Chair, to adjourn. The motion carried 3-0 (Councilors Delano and Elder absent.) The meeting adjourned at 7:41 PM.

Suspension of the Rules requested – granted

ORDERED: That the Police transfer request in the amount of \$324,200.00 to fund the recently ratified collective bargaining agreement between the City and the Police Patrol Union for FY 2016, 2017 and 2018, **APPROVED**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Comptroller				FISCAL YEAR:	2017			
		FROM ACCOUNT:					TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$671,172.25	\$324,200.00	11990006	57820	Reserve for Salaries	\$181,700.00	12100001	50420	Police Officers	\$1,915,371.52	
	Reason:	Calculated amounts for contractual obligations			Reason:	Calculated amounts for contractual obligations				
					\$2,600.00	12100001	50435	Police Specialists	\$25,299.80	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$21,300.00	12100003	51310	Overtime - Regular	\$89,729.09	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$600.00	12100003	51319	Overtime-Cell Watch	\$541.57	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$13,300.00	12100003	51320	Overtime-Court Time	\$157,353.06	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$900.00	12100003	51329	On-Call Pay	\$9,087.86	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$11,600.00	12100003	51342	Longevity	\$124,986.12	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$3,400.00	12100003	51360	Overtime-Training	\$14,039.38	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$1,200.00	12100003	51370	Overtime-Celebrations	\$2,643.46	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$4,000.00	12100003	51410	First Responder	\$39,086.86	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$33,200.00	12100003	51440	Educational Incentive	\$392,580.23	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$8,700.00	12100003	51450	Night Shift Differential	\$92,847.15	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$19,700.00	12100003	51490	Holiday	\$218,609.63	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$1,100.00	12100003	51505	K-9 Unit	\$9,927.45	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$10,200.00	12100003	51920	Sick Leave Buy Back	\$155,785.25	
	Reason:				Reason:	Calculated amounts for contractual obligations				
					\$10,700.00	88021001	51710	Workers Comp. Ins.	\$50,697.20	
	Reason:				Reason:	Calculated amounts for contractual obligations				
	\$324,200.00	Total			\$324,200.00	Total				

Suspension of the Rules requested – granted

ORDERED: That the Application to further modify Special Permit from Crabtree Lake Williams LLC for Overlook at Lake Williams, Lakeside Avenue, to accommodate changes to the design and configuration of the emergency access road and perimeter fencing in the vicinity of Bond Street, likely affecting Conditions #20, #22, #23, #36, #38 and #39, X16-1006636B, X08/09/-1002051E, refer to **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE DECEMBER 5, 2016 CITY COUNCIL MEETING**; adopted.

ORDERED: That the City Solicitor contact the Department of Revenue and any other department at the state level for a legal opinion whether the City of Marlborough is legally allowed to overcharge residents on water and sewer bills as a result of old and faulty water meters that may have undercharged residents in previous readings, **FILE**; adopted.

ORDERED: That the Communication from Attorney Twohig, on behalf of Hines Global REIT Marlborough Campus I LLC, to extend sewer connection permit for Campus at Marlborough, 100 Campus Drive to December 2, 2018, **APPROVED**; adopted.

ORDERED: That the Communication from Assistant City Solicitor, Cynthia Panagore Griffin re: Acceptance of Deed-in-Lieu-of-Foreclosure, Russell Street, in proper legal form, Order No. 16-1006700, **FILE**; adopted.

ORDERED: That pursuant to Section 77C of Chapter 60 of the General Laws of Massachusetts, the City does hereby accept title, by deed in lieu of foreclosure, from Antoinette Dufault, also known as Sister Mary Francis, of the Sisters of the Benedictine Center, 254 Still River Road, Still River MA, to a certain parcel of land described herein as follows:

That certain parcel known and numbered on the Assessors' Map of the City of Marlborough as Map 55 Parcel 210B, being approximately 43,966 S.F., and located on Russell Street.

APPROVED; adopted.

ORDERED: At a regular meeting of the Marlborough City Council on November 28, 2016, the following proposed amendment to the Code of the City of Marlborough, "PROPERTY MAINTENANCE", **TABLED UNTIL THE DECEMBER 19, 2016 MEETING AS THE TEN DAY PERIOD WILL NOT BE MET FOLLOWING THE ADVERTISEMENT DATE OF NOVEMBER 26, 2016**; adopted.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 485, ENTITLED "PROPERTY MAINTENANCE," AS FOLLOWS:

1. Chapter 485, entitled "Property Maintenance," is hereby amended by adding a new Article III, entitled "Reporting Obligations After a Devastating Event," as follows:

ARTICLE III: Reporting Obligations After a Devastating Event

Section 485-16. Definitions.

When used in this article, the following terms shall have the following meanings, unless a contrary intention clearly appears:

BUILDING

A structure, whether portable or fixed, with exterior walls or firewalls and a roof, built, erected or framed of a combination of any materials, to form shelter for persons, animals, or property.

CITY

The City of Marlborough.

COMMISSIONER

The Building Commissioner of the City of Marlborough or his/her designee.

DEVASTATING EVENT

A fire, gas explosion, lightning strike, storm, flood, falling tree, earthquake, act of vandalism, plumbing burst or freeze, or other similar event that significantly damages, in the estimation of the Commissioner, a building or structure located, at least in part, within the City.

OWNER

Every person, entity, mortgage lender, service company, property manager or real estate broker, who alone or severally with others:

- A. Has legal or equitable title to any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise; or
- B. Has care, charge or control of any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise, in any capacity, including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- C. Is a mortgagee in possession of any such dwelling, dwelling unit, mobile home unit, building or parcel of land, vacant or otherwise; or
- D. Is an officer or trustee of the association of unit owners of a condominium;
- E. Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- F. Is a person who operates a rooming house.

STRUCTURE

A combination of materials, whether wholly or partially level with, above or below the surface of the ground, whether permanent or temporary, assembled at a fixed location to give support, shelter or enclosure such as a building, framework, retaining wall, stand, platform, bin, fence (having a height at any point of six feet or greater above grade), parking area sign, flagpole, or mast for an antenna or the like.

Section 485-17. Reporting Obligations.

- A. Within 72 hours after the City has sent, by first class mail and by certified mail, written notification to the owner of a building or structure damaged by a devastating event, the owner of the building or structure damaged by the devastating event shall report in writing to the Building Commissioner the name, mailing address, and contact information including phone number of the insurance company providing insurance on the building or structure, as well as the name, mailing address, and contact information including phone number of any licensed public insurance adjuster retained by or on behalf of the owner.
- B. No later than 30 calendar days after the date of the devastating event, and at no less than 30-calendar-day intervals thereafter, the owner shall report in writing to the Building Commissioner the status of settlement negotiations with the insurer of the damaged building or structure, together with a timetable for repairing, renovating or otherwise disposing of the building or structure. The building or structure will be subject to evaluation by the Building Commissioner or his/her designee every 30 calendar days after the date of the devastating event.
- C. Failure of the owner to comply, within the pertinent 30-calendar-day period, with the reporting obligations of this Section 485-17 shall subject the owner to the antiblight provisions set forth in Article I of this Chapter.
- D. Nothing contained in this Section 485-17 shall prohibit the City from seeking any relief the City deems appropriate to protect and advance the health, safety, welfare and aesthetic concerns of the public, including but not limited to a demolition order pursuant to M.G.L. c. 139, § 1; an inspection of the building or structure by the Building Commissioner or his/her designee pursuant to M.G.L. c. 143, § 6; or a referral of the matter to the City's Board of Health to enforce the provisions of the sanitary code including by means of judicial appointment of a receiver pursuant to M.G.L. c. 111, § 127I. All costs incurred by the City pursuant to this section shall constitute a debt due the City pursuant to the provisions of M.G.L. c. 139, § 3A, M.G.L. c. 143, § 9, or M.G.L. c. 111, § 125, as applicable.

2. Since the deferred operation of this ordinance would tend to defeat its purpose, which is to make effective its provisions as soon as possible in order to protect the health and safety of the people or their property, this ordinance shall become effective immediately upon passage.

ORDERED: That the Communication from Assistant City Solicitor, Cynthia Panagore Griffin re: Application for Special Permit for a drive-thru window at Apex Center in proper legal form, Order No. 16-1006632C, **FILE**; adopted.

ORDERED:

**DECISION FOR SPECIAL PERMIT
IN CITY COUNCIL**

Special Permit
Ryan Development LLC
Order No. 16-1006632D

**DECISION ON AN APPLICATION FOR SPECIAL PERMIT
CITY COUNCIL ORDER NO. 16-1006632D**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Walker Realty LLC, its successors and assigns (the "Applicant") to build a third restaurant with a drive-through in the Hospitality and Recreation Mixed Use Overlay District (the "HRMUOD") located at 157 Apex Drive, Marlborough, Massachusetts, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

FINDINGS OF FACT & RULINGS

1. Applicant, is a duly organized and existing Limited Liability Company having a business address of 4 Lan Drive, Westford, Massachusetts 01886.
2. Apex WR 1031 LLC is the owner of the property located at 22 Apex Drive, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 78, Parcels 12, 14, 38 and 39, and Map 89, Parcel 7 (the "Site").
3. The Applicant proposes to build and operate a third restaurant with a drive-through at the Site (the "Use") as part of the larger Apex Center development (the "Project").
4. The Site is located in the HRMUOD, following the City Council's approval of a Master Concept Plan for the Project (See Order No. 16-1006443G-1), approval of the Development Agreement for the Project (See Order No. 16-1006443G-2), and the Owner's acquisition of the Site (See deed recorded in the Middlesex South District Registry of Deeds in Book 67444, Page 575).

5. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an application for a special permit for the third restaurant with a drive-through at Apex Center, as provided in this Decision and subject to the following.
6. In connection with the Application, the Applicant has submitted a certified list of abutters, filing fees, and a detailed site plan entitled “157 Apex Drive Building Pad and Site Plan” prepared by Hancock Associates and dated August 2, 2016, last revised September 15, 2016 (the “Plans”).
7. The Plans were certified by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
8. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
9. The Marlborough City Council, pursuant to Massachusetts General Laws, Chapter 40A, held a public hearing on the application on Monday, September 12, 2016. The hearing was opened and closed on that date.
10. The Applicant, through its representatives, presented testimony at the public hearing detailing the Project, describing its impact upon municipal services, the neighborhood, and traffic.

**BASED UPON THE ABOVE, THE CITY COUNCIL MAKES THE
FOLLOWING FINDINGS OF FACT AND TAKES THE FOLLOWING
ACTIONS:**

- A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- B. The City Council finds that the proposed Use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.

- C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS the Applicant a Special Permit to build and operate restaurant with a drive-through in the Hospitality and Recreation Mixed Use Overlay District as shown on the Plans filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, its successors and/or assigns:
1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts, and shall be built according to the Plans as may be amended during Site Plan Review.
 2. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Project.
 3. Site Plan Review. The issuance of the Special Permit is further subject to that certain Site Plan Review Decision issued on November 2, 2016 for the overall Project, which Site Plan Review Decision was issued in accordance with the HRMUOD Ordinance and the City of Marlborough Site Plan Review Ordinance.
 4. Modification of Plans. Notwithstanding conditions #1 and #3 above, the City Council or the Site Plan Review Committee may make engineering changes to the Plans, so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow, increase the size, shape or position of the building, or alter the fencing bordering the property (if any), all as shown on the Plans.
 5. Incorporation of Submission. All plans, photo and other renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 6. Rendering. The City Council expressly approves the appearance of the building design for the Use, illustrated in the form of an architectural rendering by Upland Architects, dated 9.7.2016 (the "Rendering"), which is herein incorporated into and becomes a part of this Special Permit and which becomes a condition and requirement of the same, unless otherwise altered by the City Council, except that minor alterations substantially consistent with the Rendering may be granted by the Building Commissioner, pursuant to paragraph 2. of section L. of §650-35 (HRMUOD) of the City Zoning Code, in the Building Commissioner's reasonable discretion.

7. Change of Operator. The Applicant intends that the operator of the drive-through will be Friendly's Restaurant, or an equivalent or similar type of food service establishment. For so long as Apex Drive remains a private way, a type of food service establishment equivalent or similar to Friendly's Restaurant may operate the drive-through without an amendment to this Special Permit provided that the Building Commissioner, in his reasonable discretion, determines that (i) the proposed new type of food service establishment is not likely to generate significantly greater drive-through traffic volumes, or (ii) in the event that the Building Commissioner, in his reasonable discretion, determines that the proposed new type of food service establishment is likely to generate significantly greater drive-through traffic volumes as provided in (i) above, the Site Plan Committee or its successor, through a Site Plan Approval decision may, in the Site Plan Committee's reasonable discretion, impose reasonable site and/or layout modification conditions to ensure safe drive-through operations.
8. Recording of Decision. In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its successors and/or assigns at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed. Applicant, its affiliates, successors and/or assigns shall also furnish proof of recording to the City Solicitor's Office and the City Council immediately subsequent to recording.

Yea: 10 – Nay: 0

Yea: Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juairé, Oram, Ossing.

Absent: Robey

ORDERED: That the Communication from City Solicitor, Donald Rider re: Proposed Zoning Amendment-Assisted Living Facilities in proper legal form, Order No. 16-1006631C, **FILE**; adopted.

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 650, ENTITLED "ZONING," AS FOLLOWS:

1. Chapter 650, entitled "Zoning," is hereby amended as follows:
 - a. In Section 650-5.B, by deleting the definition of ASSISTED LIVING FACILITY and inserting in place thereof the following:-- ASSISTED LIVING FACILITY means a managed residential community, operating under the provisions of MGL Chapter 19D and the regulations promulgated thereunder at 651 CMR 12.00 as may be amended from time to time. An Assisted Living Facility may provide a Special Care Residence, but shall not provide a (i) Dementia Special Care Unit, or (ii) any other full-time nursing care such as provided at a Long-Term Care Facility, as defined in 105 CMR 150.001, including but not limited to a convalescent home or nursing home, as defined in this Zoning Ordinance.
 - b. In Section 650-5.B, by amending the definition of BOARDINGHOUSE OR LODGING HOUSE by inserting after the words "nursing homes" the following:-- Assisted Living Facilities.
 - c. In Section 650-5.B, by deleting the definition of CONVALESCENT HOME / NURSING HOME and inserting in place thereof the following:-- CONVALESCENT HOME / NURSING HOME means any institution, however named, whether conducted for charity or profit, which is advertised, announced or maintained for the express or implied purpose of caring for four or more persons admitted thereto for the purpose of convalescent or nursing care, as provided in MGL c. 111, § 71 and the regulations promulgated thereunder at 105 CMR as may be amended from time to time.
 - d. In Section 650-5.B, by adding the following new definition:-- DEMENTIA SPECIAL CARE UNIT means a facility licensed pursuant to 105 CMR 150.000, or a unit thereof, that uses any word, term, phrase, or image, or suggests in any way, that it is capable of providing specialized care for residents with dementia, which must comply with 105 CMR 150.022 through 150.029. The purpose of a Dementia Special Care Unit is to care for its residents with dementia in the long term. A Dementia Special Care Unit may be a stand-alone use, or it may be part of another Long-Term Care Facility, as defined in 105 CMR 150.001, including but not limited to a convalescent home or nursing home, as defined in this Zoning Ordinance.
 - e. In Section 650-5.B, by adding the following new definition:-- SPECIAL CARE RESIDENCE" means a separate and distinct section within an Assisted Living Facility and comprising no more than 30% of its residence units, that provides an enhanced level of supports and services for one or more of its residents to address their specialized needs due to cognitive or other impairments.

- f. In Section 650-17, entitled “Table of Use Regulations,” by adding to said section Section 650-17 the following use to be regulated in each zoning district as follows:

Zoning District Abbreviations

	RR	A1	A2	A3	RB	RC	RCR	B	CA	LI	I	MV
Residential Use												
Assisted Living Facilities (44)	N	N	SP	N	N	N	N	N	N	N	N	N

- g. In Section 650-18, entitled “Conditions for uses,” by adding new subsection (44), as follows:--

(44) Assisted Living Facilities:

- a. shall only be located within the A-2 zoning district north of U.S. Route 20 and with frontage on Massachusetts State Route 85;
- b. shall be located only on parcels of five acres or more;
- c. shall be subject to a special permit based on the City Council’s written determination which shall include, but not be limited to, consideration of each of the following criteria:
 - (1) Adequate access to and from the proposed Assisted Living Facility for emergency response vehicles;
 - (2) Adequate alternative access, if necessary, to and from the proposed Assisted Living Facility in case an emergency requires evacuation thereof;
 - (3) Provision for medical transport; and
 - (4) The overall impact of the proposed Assisted Living Facility will not adversely affect the neighborhood or the City;
- d. and shall be subject to the following additional requirements:
 - (1) Dimensional Conformity.

A proposed Assisted Living Facility shall conform to the dimensional criteria for the A-2 zoning district as set forth in Section 650-41, entitled “Table of Lot Area, Yards, and Height of Structures”; provided, however, that if the City Council finds, in accordance with Section 650-59.C(12)(a), that (i) land to be donated for municipal purposes to the City as a condition of a special permit to be granted hereunder will benefit the City and its citizens generally, and that (ii) prior to such land donation the proposed Assisted Living Facility otherwise conforms to the dimensional criteria of Section 650-41, then the City Council may, as a condition for granting a special permit hereunder, modify Section 650-41’s dimensional criteria as applied to the proposed Assisted Living Facility.

(2) Application Process.

- (a) The applicant shall submit a plan for the overall development, including a final site plan showing the final completed development in all phases as contemplated on the site at the time of application, regardless of the number of phases in which it may be constructed. The application shall include at a minimum a completely designed first phase of development.
- (b) The application shall be filed in the name of the applicant. The applicant must either own the development parcel or, when the application is submitted, submit authorization in writing to act for all of the owners of the development parcel.

(3) Design Standards.

In addition to all applicable landscaping and screening regulations set forth in Section 650-47, the following design standards shall apply:

- (a) Structures shall be designed to be compatible in architectural character with the surrounding neighborhood and shall not present an ‘institution’-like front façade;
 - (b) Surface parking in front of the facility shall be minimized, with staff parking preferably at the side and rear;
 - (c) Rooftop mechanicals shall be screened and not look like ‘add-on’ elements;
 - (d) Pedestrian walkways and connections to surrounding uses, particularly public uses, shall be encouraged;
 - (e) Bicycle parking shall be provided; and
 - (f) As appropriate, a covered bus shelter may be required.
- h. In Section 650-48, entitled “Off-street parking,” subsection A, by inserting a new sub-subsection 16 as follows:-- (16) Assisted Living Facility: one space for each two beds. Reserve parking area equivalent to one space per four employees on the largest shift at the Facility shall be provided on the site plan in case of need, such provision to be reviewed after one full year of continuous Facility operation.
2. This ordinance shall become effective upon passage by the City Council and signature by the Mayor.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain, adopted. No objection to passage in one evening.

ORDERED: That the DPW transfer request in the amount of \$1,650,000.00 which moves funds from Undesignated to Department of Public Works Solid Waste Disposal account to fund ongoing legal fees and settlement with WeCare Environmental, **APPROVED;** adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Sewer					FISCAL YEAR:	2017		
		FROM ACCOUNT:					TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Available Balance
\$12,176,290.00	\$1,650,000.00	10000	35900	Undesignated Fund	\$1,650,000.00	60086006	52935	Solid Waste Disposal		\$124,439.40
	Reason:							Wecare settlement agreement		
	\$1,650,000.00	Total			\$1,650,000.00	Total				

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:07 PM.